

Rural Utilities Service, USDA

§ 1788.6

(e) Borrowers shall furnish evidence annually that the required insurance and fidelity coverage has been in force for the entire year, and that the borrower has taken all steps currently necessary and will continue to take all steps necessary to ensure that the coverage will remain in force until all loans made or guaranteed by RUS are paid in full. Such evidence shall be in a form satisfactory to RUS. Generally a certification included as part of the RUS Financial and Statistical Report filed by the borrower annually (RUS Form 7 or Form 12 for electric borrowers, RUS Form 479 for telecommunications borrowers, or the successors to these forms) is sufficient evidence of this coverage.

§ 1788.3 Flood insurance.

(a) Borrowers shall purchase and maintain flood insurance for buildings in flood hazard areas to the extent available and required under the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) The insurance should cover, in addition to the building, any machinery, equipment, fixtures, and furnishings contained in the building.

(b) The National Flood Insurance Program (see 44 CFR Part 59 *et seq.*) provides for a standard flood insurance policy; however, other existing insurance policies which provide flood coverage may be used where flood insurance is available in lieu of the standard flood insurance policy. Such policies must be endorsed to provide:

(1) That the insurer give 30 days written notice of cancellation or non-renewal to the insured with respect to the flood insurance coverage. To be effective, such notice must be mailed to both the insured and RUS and other mortgagees if any and must include information as to the availability of flood insurance coverage under the National Flood Insurance Program, and

(2) That the flood insurance coverage is at least as broad as the coverage offered by the Standard Flood Insurance Policy.

§ 1788.4 Disclosure of irregularities and illegal acts.

(a) Borrowers must immediately report, in writing, all irregularities and

all indications or instances of illegal acts in its operations, whether material or not, to RUS and the Office of the Inspector General (OIG). See 7 CFR 1773.9(c)(3) for OIG addresses. The reporting requirements for borrowers are the same as those for CPA's set forth in § 1773.9

(b) Borrowers are required to make full disclosure to the bonding company of the dishonest or fraudulent acts.

§ 1788.5 RUS endorsement required.

In the case of a cooperative or mutual organization, RUS requires that the following:

Endorsement Waiving Immunity From Tort Liability'' be included as a part of each public liability, owned, non-owned, hired automobile, and aircraft liability, employers' liability policy, and boiler policy:

The Insurer agrees with the Rural Utilities Service that such insurance as is afforded by the policy applies subject to the following provisions:

1. The Insurer agrees that it will not use, either in the adjustment of claims or in the defense of suits against the Insured, the immunity of the Insured from tort liability, unless requested by the Insured to interpose such defense.

2. The Insured agrees that the waiver of the defense of immunity shall not subject the Insurer to liability of any portion of a claim, verdict or judgment in excess of the limits of liability stated in the policy.

3. The Insurer agrees that if the Insured is relieved of liability because of its immunity, either by interposition of such defense at the request of the Insured or by voluntary action of a court, the insurance applicable to the injuries on which such suit is based, to the extent to which it would otherwise have been available to the Insured, shall apply to officers and employees of the Insured in their capacity as such; provided that all defenses other than immunity from tort liability which would be available to the Insurer but for said immunity in suits against the Insured or against the Insurer under the policy shall be available to the Insurer with respect to such officers and employees in suits against such officers and employees or against the Insurer under the policy.

§ 1788.6 RUS right to place insurance.

If a borrower fails to purchase or maintain the required insurance and fidelity coverage, the mortgagees may place required insurance and fidelity coverage on behalf and in the name of the borrower. The borrower shall pay

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the cost of this coverage, as provided in the loan documents.

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Subpart B—Insurance for Contractors, Engineers, and Architects, Electric Borrowers

§ 1788.11 Minimum insurance requirements for contractors, engineers, and architects.

(a) Each electric borrower shall include the provisions in this paragraph in its agreements with contractors, engineers, and architects, said agreements that are wholly or partially financed by RUS loans or guarantees. The borrower should replace “Contractor” with “Engineer” or “Architect” as appropriate.

1. The Contractor shall take out and maintain throughout the period of this Agreement insurance of the following minimum types and amounts:

a. Worker's compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to workers' compensation laws of the governing State, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, non-owned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million each occurrence, and property damage limits of \$1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

2. The Owner shall have the right at any time to require public liability insurance and property damage liability insurance

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greater than those required in paragraphs (a)(1)(b) and (a)(1)(c) of this section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

3. The Owner shall be named as Additional Insured on all policies of insurance required in (a)(1)(b) and (a)(1)(c) of this section.

4. The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Contractor shall furnish the Owner a certificate evidencing compliance with the foregoing requirements that shall provide not less than 30 days prior written notice to the Owner of any cancellation or material change in the insurance.

(b) Electric borrowers shall also ensure that all architects and engineers working under contract with the borrower have insurance coverage for Errors and Omissions (Professional Liability Insurance) in an amount at least as large as the amount of the architectural or engineering services contract but not less than \$500,000.

(c) The borrower may increase the limits of insurance if desired.

(d) The minimum requirement of \$1 million of public liability insurance does not apply to contractors performing maintenance work, janitorial-type services, meter reading services, rights-of-way mowing, and jobs of a similar nature. However, borrowers shall ensure that the contractor performing the work has public liability coverage at a level determined to be appropriate by the borrower.

(e) If requested by RUS, the borrower shall provide RUS with a certificate from the contractor, engineer, or architect evidencing compliance with the requirements of this section.

§ 1788.12 Contractors' bonds.

Electric borrowers shall require contractors to obtain contractors' bonds when required by part 1726, Electric System Construction Policies and Procedures, of this chapter. Surety companies providing contractors' bonds shall be listed as acceptable sureties in the U.S. Department of Treasury Circular No. 570. The circular is maintained through periodic publication in the FEDERAL REGISTER and is available on the Internet under <ftp://ftp.fedworld.gov/pub/tel/sureties.txt>,